IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2152 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VANRAJSINH GOVUBHA GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2152 of 2003

MR MURALI N DEVNANI for Petitioner No. 1

Mr. VM Pancholi, AGP for Respondent No. 1

Mr. Chudgar for M/s. NANAVATI ASSOCIATES for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 03/02/2004

ORAL JUDGEMENT

Rule. Learned A.G.P., Mr. Pancholi, waives service of notice of Rule for respondent No.1 and Mr. Chudgar waives service of notice for respondent No.2.

2. The petitioner is serving as Assistant Supervisor with respondent No.2, Gujarat Forest Development Corporation Ltd. The petitioner was prosecuted for misappropriation of the funds of the Corporation to the tune of Rs. 1,35,650/= where, after trial, he has been acquitted.

The petitioner was placed under suspension because of the same very charges. While he was under suspension, he made a representation on 19th August 1991 to respondent No.2 praying for revoking the order of suspension. In that representation, he stated that he is not guilty of the charges levelled against him, however in order to protect the financial interests of the Corporation he is prepared to deposit the amount of alleged misappropriation and he is also prepared to undergo the punishment which may be inflicted. He said that the amount may be deducted by way of instalments from his salary.

Following this representation, the petitioner was ordered to be reinstated in service and an order was passed to deduct an amount of Rs. 1000/= per month from his salary. He also deposited amounts of Rs. 75,000/= on 28.10.1989, Rs. 96,295.50 on 1.12.1989, and Rs. 5,000/= on 1.6.1992 (details on Annexure "G").

3. The petitioner came to be acquitted by the Criminal Court on 18.6.1998. He, therefore, made a representation on 21.11.2001 for refund of the money deposited by him with the expenditure on the litigation. That amount is not paid by respondent No.2 and the order came to be passed in this regard on 17.9.2002, wherein it was held that whatever amount is recovered till then is to be considered as recovery, and rest of the amount is not to be recovered. Aggrieved by the said order, this petition is preferred. Learned advocate, Mr. Devnani submitted that in the impugned order itself it is observed that recovery was not legitimate. He submitted that there were no departmental proceedings held against the petitioner for the alleged misconduct and in criminal trial he has been acquitted. As such, there is total absence of any finding of guilt either in a departmental proceeding or in a criminal proceeding and therefore the recovery made is illegal and respondent Corporation ought to have ordered its refund while passing the impugned order. He, therefore, submitted that this petition may be allowed.

4. Learned advocate, Mr. Chudgar has drawn attention of this Court to affidavit-in-reply and

annexures thereto to support his case of the Corporation that the petitioner had volunteered to deposit the amount admitting his guilt and therefore the amount is recovered and because of the acquittal in criminal trial recovery is stopped. He, therefore, submitted that this petition may be dismissed.

5. Learned AGP, Mr. Pancholi has opposed this petition too. He has drawn attention of this Court to the affidavit-in-reply of respondent No.2 and supporting document, particularly representation dated 19.8.1991. He submitted that the petition may be dismissed.

6. Having regard to the contentions raised before this Court, it is clear that the petitioner was prosecuted for misappropriation wherein he has been acquitted. He was suspended from service and pursuant to his representation he was reinstated in service with an order to recover Rs. 1,000/= from his salary and deposit of amount by him. The amount, thus, recovered and deposited by him goes to Rs. 2,59,295.50 ps (Annexure "G"). On his acquittal, he made a representation for refund of this money, pursuant to which impugned order, Annexure "A" came to be passed.

7. Now, this Annexure "A" makes an interesting reading. The authority of respondent No.2-Corporation has itself observed that the order of recovery though founded on undertaking given by the petitioner was not justified and if such order was passed only after departmental proceeding against the petitioner that it would have been justified.

Apart from this, it is very clear from the order that the decision by the Committee to reinstate the petitioner revoking his suspension was conditional to recovery of Rs. 1,000/= per month from the salary of the petitioner "pending the decision of the criminal trial" . This conduct of the Corporation, and tenor of the order leaves no scope for any doubt that the Corporation depended only on the decision in the criminal trial for deciding the question of guilt of the petitioner of the alleged misappropriation, otherwise the Corporation would have proceeded against the petitioner departmentally. That having not been done, the decision of respondent No.2, to hold that whatever amount was recovered till then should be considered as recovery against misappropriation and to stop further recovery is in no way justifiable or legal.

8. There is total absence of a finding of guilt for

the charges, either by a competent criminal Court or by a departmental authority. It is also worthwhile to note that in the representation made by the petitioner the amount was volunteered to be deposited by the petitioner. He cannot be said to have admitted guilt. He has categorically stated that he is not guilty. He has shown his readiness to undergo the punishment that the respondent may impose but for imposing a punishment, respondent has come to a conclusion and give a finding that he is guilty of the charges levelled against him and for that there has to be some departmental proceedings. Whereas, as discussed above, there is total absence of such departmental proceedings or conclusion. The amounts deposited by the petitioner and recovery made from his salary, consequent to the order of reinstatement, and non-refund of the amount, after acquittal, is nothing but imposition of penalty without any finding of guilt or misconduct.

9. The petition, for the abovestated reasons, deserves to be allowed. The respondent No.2 is directed to refund the amount deposited by the petitioner and/or recovered from him, as per Annexure "G", to the tune of Rs. 2,59,295.50 ps., as claimed by the petitioner. There appears to be no dispute about this amount considering the affidavit-in-reply. The amount shall be paid by respondent No.2 to the petitioner within a period of three weeks from date of receipt of this order.

The petitioner is also aggrieved by non-regularisation of his period of suspension and for not considering his case for promotion. In this regard, it would be open for the petitioner to make a representation, and respondent No.2 shall take an appropriate decision on representations.

10. It is clarified, that it would be open for respondent No.2 to take departmental action against the petitioner, if permissible under rules and law, which would be without prejudice to the right of the petitioner to raise all contentions against the action including the delay. Rule is made absolute accordingly. No order as to costs.

[A.L. Dave, J.]
rmr.